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13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 BOARD OF TRUSTEES OF THE
16 CONSTRUCTION INDUSTRY AND
17 LABORERS JOINT PENSION TRUST
18 FOR SOUTHERN NEVADA and THE
19 CONSTRUCTION INDUSTRY AND
20 LABORERS JOINT PENSION TRUST
21 FOR SOUTHERN NEVADA

22 Plaintiffs,

23 Case No.:

24 **COMPLAINT**

25 vs.
26 SUPERIOR GUNITE, a foreign corporation,

27 Defendant.

28 Plaintiffs allege:

JURISDICTION AND VENUE

29 1. The claim at issue in this Complaint presents a present, actual, and justiciable
30 controversy arising under federal law.

31 2. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal
32 question). This Court additionally has subject matter jurisdiction to enforce a pension benefit
33 plan's collection of withdrawal liability assessed against an employer under the Employee
34 Retirement Income Protection Act of 1990, 29 U.S.C. § 1001 et seq.

1 Retirement Income Security Act of 1974 (“ERISA”), as amended by the Multiemployer Pension
2 Plan Amendments Act of 1980 (“MPPAA”), specifically at 29 U.S.C. § 1401(b)(1).

3 3. Venue is proper under 29 U.S.C. § 1451(d) because the Pension Trust is
4 administered in Clark County, Nevada.

PARTIES

6 4. Plaintiffs are the Board of Trustees of the Construction Industry and Laborers Joint
7 Pension Trust for Southern Nevada (the “Board of Trustees”) and the Construction Industry and
8 Laborers Joint Pension Trust for Southern Nevada (the “Pension Trust”) (collectively referred to
9 as “Plaintiffs”).

10 5. The Board of Trustees is made up of fiduciaries of the Pension Trust for purposes
11 of ERISA.

12 6. The Pension Trust is an “employee benefit pension plan” as defined in 29 U.S.C. §
13 1002(2); and a “multiemployer plan” as defined in 29 U.S.C. §§ 1002(37) and 1301(a)(3).

14 7. Defendant, Superior Gunite is a foreign corporation and is an employer within the
15 meaning of 29 U.S.C. § 1002(5).

FACTUAL BACKGROUND

17 8. Superior Gunite was a signatory to a collective bargaining agreement that required
18 Superior Gunite to make employee benefit contributions to the Pension Trust.

19 9. During the plan year ending on December 31, 2017, Superior Gunite withdrew
20 from the Pension Trust by ceasing to make contributions. This withdrawal constituted a complete
21 withdrawal under 29 U.S.C. § 1383.

22 10. On September 29, 2021, the Pension Trust sent a withdrawal liability assessment
23 and demand for payment to Superior Gunite in the amount of \$93,024, with the first quarterly
24 payment of \$10,675 due on November 1, 2021.

25 11. Superior Gunite did not pay its first quarterly payment. As a result, the Pension
26 Trust provided Superior Gunite with written notice that it was delinquent on its payments, and
27 provided 60 days for Superior Gunite to cure the default.

12. To date, Superior Gunite has refused to pay its withdrawal liability assessments in accordance with the Pension Trust's schedule for withdrawal liability payments.

SOLE CAUSE OF ACTION

(Judgment for Withdrawal Liability)

13. Plaintiffs hereby incorporate the allegations contained in paragraphs 1 to 12 as though fully set forth herein.

14. This dispute is a case of actual controversy within this Court's jurisdiction.

15. The Pension Trust provided Superior Gunite with a withdrawal liability assessment, and Superior Gunite has failed to make the required payments. The Pension Trust gave Superior Gunite a 60-day period to cure the default, but Superior Gunite has failed to make any payments to the Pension Trust.

16. Due to Superior Gunite's failure to make payments on the schedule set by the Pension Trust, Plaintiffs seek a judgment for the entire assessed withdrawal liability amount, as well as interest, liquidated damages, attorney's fees.

WHEREFORE, Plaintiffs pray for relief as follows:

1. A judgment in favor of the Pension Trust awarding the entire withdrawal liability owed by Superior Gunite, interest, liquidated damages, and attorney's fees; and

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1 2. For such other and further relief as the Court deems proper.

2 Dated: February 10, 2022.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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